

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND E. LOPEZ,

No. C 13-0649 TEH (PR)

Petitioner,

ORDER GRANTING PETITIONER
FOURTEEN DAYS TO RESPOND

v.

GREG D. LEWIS, Warden,

Respondent.

_____ /

On February 13, 2013, Petitioner Raymond E. Lopez, an inmate at Pelican Bay State Prison, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On the same date, Petitioner moved for a stay of his petition in order to exhaust unexhausted claims.

On March 19, 2013, the Court issued an Order Denying without prejudice Petitioner's motion for a stay. Doc. #4. In the Order, the Court noted that Petitioner alleged seven claims in his petition, but that only one of them appeared to have been exhausted in state court. The Court indicated that, as it was written, Petitioner's motion did not meet the requirements to stay his petition and explained the two types of stays that were available to him. The Court granted Petitioner twenty-eight days in which to pursue one of the two options for a stay or to inform the Court that he wished to proceed on the exhausted claims that were presented in his petition.

Twenty-eight days have passed and Petitioner has not filed a re-newed motion for a stay, informed the Court that he wishes to


1 proceed only on his exhausted claims, or communicated with the Court
2 in any manner.

3 The general rule is that a federal district court must
4 dismiss a federal habeas petition containing any claim as to which
5 state remedies have not been exhausted. Rose v. Lundy, 455 U.S.
6 509, 522 (1982). However, the court may stay a mixed petition to
7 allow the petitioner to exhaust in state court. Rhines v. Weber,
8 544 U.S. 269, 277 (2005).

9 In the interests of justice, the Court will allow
10 Petitioner fourteen more days in which to inform the Court how he
11 wishes to proceed. As noted above, a mixed petition, that is a
12 petition that contains exhausted and unexhausted claims such as this
13 petition, must be dismissed, unless the petitioner's motion for a
14 stay is granted. Therefore, if, in fourteen days, Petitioner does
15 not file a re-newed motion for a stay or inform the Court that he
16 wishes to proceed only with his exhausted claims, his mixed petition
17 will be dismissed without prejudice to re-filing when his claims are
18 exhausted.

19
20 IT IS SO ORDERED.

21
22 DATED 04/22/2013



THELTON E. HENDERSON
United States District Judge